

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**KEVIN D. BARNETT**  
Claimant

VS.

**RATHEON AIRCRAFT COMPANY**  
Respondent  
Self-Insured

}  
}  
}  
}

Docket No. 211,839

**ORDER**

Respondent appeals from a preliminary hearing Order dated May 30, 1996 wherein Administrative Law Judge John D. Clark granted claimant benefits in the form of medical treatment and temporary total disability compensation, finding claimant's personal injury by accident arose out of and in the course of his employment.

**ISSUES**

Whether claimant met with personal injury by accident arising out of and in the course of his employment with respondent.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Based upon the evidence presented and for the purpose of preliminary hearing, the Appeals Board finds as follows:

The Appeals Board finds claimant has proven by a preponderance of the credible evidence that he suffered accidental injury arising out of and in the course of his employment with respondent on the date alleged. Claimant acknowledged that his problem occurred when he arose from a stool upon which he was sitting during his lunch break. As he twisted, he felt a pop in his back and began experiencing significant problems. These problems ultimately led to surgery on May 20, 1996 with Dr. Robert L. Eyster.

Respondent's main defense stems from the fact claimant had a prior injury to his back and in 1994 underwent a laminectomy at the same level as are his current problems. Claimant advised he had little difficulty with his back following the surgery with only occasional minor symptomatology.

Respondent cites, in support of its position, *Martin v. U.S.D.* No.233, 5 Kan. App. 2d 298, 615 P.2d 168 (1980). In *Martin* claimant was exiting his pickup truck in the employer's parking lot when he felt a sudden onset of pain in his back. The Court of Appeals found *Martin* to be noncompensable holding that it did not arise out of his employment. The court noted work place hazards may be analyzed by using three general categories of risks. First, those risks distinctly associated with the job; second, risks which are personal to the employer; and third, the so-called neutral risks which have no particular employment or personal character. The Court found that only those risks falling in the first

category are universally compensable. Personal risks do not arise out of employment and are not compensable. In Martin the risk was found to not be associated with claimant's employment and could not be seen as a neutral risk, but was considered merely a personal risk. In this circumstance, the Appeals Board finds the factual scenario of Martin to be distinguishable. Here, claimant had a preexisting condition just as in Martin. Unlike Martin, this claimant had been at work for several hours and had been experiencing minor work-connected symptomatology prior to the actual onset of pain. This distinction, while seemingly minor, is significantly different from the Martin scenario.

The Appeals Board therefore finds for preliminary hearing purposes, the claimant has proven by a preponderance of the credible evidence that he suffered accidental injury arising out of and in the course of his employment with respondent.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge John D. Clark dated May 30, 1996 should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of August 1996.

BOARD MEMBER \_\_\_\_\_

c: David Farris, Wichita, KS  
David S. Wooding, Wichita, KS  
John D. Clark, Administrative Law Judge  
Philip S. Harness, Director